

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

ANTHONY MICHAEL PISANO,

Appellant,

vs.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13693

Trial Court No. 3AN-17-07343CR


**NOTICE OF STATE'S INTENT TO INTRODUCE 404(B)(1) EVIDENCE  
AND NEW CRIMINAL CONDUCT**

VRA CERTIFICATION. I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim or witness to any crime unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The State notifies this Court of a recent filing in the superior court alleging additional criminal conduct by Anthony Pisano. A copy of the superior court filing is attached.

DATED March 12, 2021.

TREG R. TAYLOR  
Attorney General

By:   
Donald Soderstrom (1205046)  
Assistant Attorney General

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**CERTIFICATE OF SERVICE AND TYPEFACE**

I, Deana Schubert, state that I am employed by the Alaska Department of Law, Office of Criminal Appeals, and that on March 12, 2021, I emailed a copy of the State's NOTICE OF STATE'S INTENT TO INTRODUCE 404(B)(1) EVIDENCE AND NEW CRIMINAL CONDUCT and this CERTIFICATE OF SERVICE AND TYPEFACE in the above-titled case to:

Hatton Greer  
Office of Public Advocacy  
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I further certify, pursuant to App. R. 513.5, that the font used in the aforementioned documents is Century Schoolbook 13 point.



Deana Schubert

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff,

vs.

ANTHONY MICHAEL PISANO

DOB: 04/01/1974

APSIN ID: 8121664

DMV NO.:

ATN: 115447446

Defendant.

Court No. 3AN-17-07343CR (Anthony Michael Pisano)

Notice of Intent to Introduce Evidence Pursuant to Alaska Rule of Evidence 404(b)(1)

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

**I. INTRODUCTION**

The State of Alaska, by and through District Attorney Brittany L. Dunlop, hereby files this motion to admit prior bad acts, pursuant to Alaska Rule of Evidence 404 (b)(1). The specific act the State intends to introduce is the defendant's post trial continued plot to have Michael Dupree Murdered, and his solicitation of a fellow inmate to carry out that plan.

**II. RELEVANT FACTS AND PROCEDURAL POSTURE**

After the court declared a mistrial based on a hung jury in the above captioned case in March of 2020, the defendant, Anthony Pisano, immediately began an effort to

1 coordinate the murder of one of the primary witnesses, Michael Dupree.<sup>1</sup> The state was  
2 contacted by the wife of an inmate, who described that the defendant was attempting to  
3 hire her husband to kill Michael Dupree.<sup>2</sup> The investigator listened to jail calls between  
4 the inmate and his wife to confirm the veracity of her report. The investigators contacted  
5 the inmate who described a meeting with Pisano, who lived in the same MOD as him in  
6 the jail. He reported that Pisano told him that someone was threatening his (Pisano's)  
7 wife and child. Once they were in Pisano's cell alone, he asked if the inmate could "take  
8 care of something" for him. Pisano showed him pictures, as well as private information  
9 to include social security information, date of birth, and home address for Michael  
10 Dupree. The inmate was able to accurately describe Dupree's home based on the photos  
11 showed to him by Pisano. Pisano implied that the inmate should cause bodily harm to  
12 Michael Dupree in exchange for an undisclosed amount of money. The inmate initially  
13 told his wife on the phone that he believed the sum to be somewhere between 40-50  
14 thousand dollars.

15 In a later conversation, while still in custody, Pisano told the inmate he would be  
16 paid 1000 dollars to kill Dupree in addition to "incentives down the road." The inmate  
17 questioned whether he just wanted him beaten up or taken out. Pisano did not verbally  
18 respond to the question but wrote "taken out" on a piece of paper and flushed it down the  
19 toilet. The Department of Corrections was able to confirm through video that this inmate  
20 has been in Pisano's cell during the relevant timeframe.

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24 <sup>1</sup> The State has provided to the defendant the audio of all relevant jail calls and interviews, police reports,  
and written communication regarding these new acts.

25 <sup>2</sup> This inmate is referenced by name in the discovery provided to the defendant, but to protect his safety,  
26 he is not identified here. The state respectfully requests that any responsive pleadings regarding this  
27 inmate use the same or similarly general language. To the extent his name or more particularized facts  
are discussed, the State would request that any pleadings be sealed.

1 The Anchorage Police Department applied for and was granted a glass search  
2 warrant to record conversations between Pisano and the inmate in custody.<sup>3</sup> Before the  
3 warrant could be executed, the inmate had to be moved to a different MOD in the jail,  
4 separate from Pisano, because other inmates in his MOD believed him to a “snitch”  
5 regarding drug information. (There is no information that the inmate was cooperating  
6 with any other law enforcement officers in any other capacity, but it became potentially  
7 unsafe to continue housing him in that particular MOD.)

8 The inmate was released on parole in June of 2020, and had some written  
9 communication with Pisano. The written communication however, was veiled and did  
10 not include a specific directive to kill Dupree, however both the inmate and Pisano  
11 reference the “business” they discussed, but without more specifics. In a letter from  
12 Pisano to the inmate dated June, 29 2020 Pisano wrote in very general terms about the  
13 inmate helping him out with the business plans, and that he can Google some of the  
14 things that are needed. Pisano also wrote “the other stuff - you are already tracking what  
15 is needed.” The inmate believed this coded message to be specific to Pisano’s request to  
16 “take out” Dupree. The inmate has confirmed and is willing to testify that he and Pisano  
17 never talked about any other business dealings besides the hit on Michael Dupree.

18 The State is also aware that Pisano has been tracking the movements of Michael  
19 Dupree, because he has disclosed as much in recorded jail calls to family members and  
20 friends. Those phone calls took place in early September 2020. Pisano reports to friends  
21 and family being aware that Dupree had moved out of state.

22 These actions, specifically the solicitation to commit murder should be admitted  
23 against the defendant in his upcoming trial to prove his motive and intent in this case, and  
24 his consciousness of his own guilt pursuant to Alaska Rule of Evidence 404(b)(1). The  
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26  
27 <sup>3</sup> The state has discovered a copy of this sealed warrant to the defense. However, to protect his identity,  
the State continues to request that the warrant remain sealed.

state acknowledges that it has not charged the crime of Solicitation to Commit Murder in the First Degree, because renunciation is a complete defense. As far as the State is aware, the defendant has not had additional contact with the inmate since this August 2020. The failure to complete the act constituting the crime of Solicitation to Commit Murder in the First Degree, does not make the attempt to hire someone to complete that crime any less relevant or compelling. This evidence is highly probative, and should be admitted before the jury that ultimately decides if Pisano is guilty of the charged counts of Murder in the First Degree, and Attempted Murder in the First Degree.

### III. LAW AND ARGUMENT

#### A. The Prior Act Evidence is Admissible Under Evidence Rule 404(b)(1).

Alaska Rule of Evidence 404(b)(1) reads:

(b) Other Crimes, Wrongs, or Acts.

(1) Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of the person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

Prior misconduct evidence is inadmissible under Rule 404(b)(1) only if "the sole purpose" of the evidence is to prove propensity.<sup>4</sup> If a non-propensity use is demonstrated, the evidence of prior misconduct is presumptively admissible, subject to exclusion only if its probative value is outweighed by its potential for unfair prejudice.<sup>5</sup>

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<sup>4</sup> *Brown v. Municipality of Anchorage*, 915 P.2d 654, 656 (Alaska App. 1996) (emphasis added).

<sup>5</sup> *Miller v. State*, 866 P.2d 130, 133 (Alaska App. 1994).

1 In the present case the evidence of his immediately after trial attempt to have  
2 Michael Dupree killed, is evidence of Anthony Pisano's initial motive, intent and plan to  
3 kill Michael Dupree at the Bullion Brothers shop. It is evidence of his plan during the  
4 course of the homicides to kill any witnesses. In the present case it has been the State's  
5 position that Pisano intended to rob the Bullion Brother's shop, killing the owners and  
6 any witnesses. He killed Steven Cook in order to complete his planned robbery and  
7 killed Morgan McCreadie and Daniel Hartman because they were witnesses. He also  
8 attempted to kill Michael Dupree to complete the robbery. However, he was  
9 unsuccessful. This post-trial attempt to kill the only surviving witnesses, is incredibly  
10 strong evidence of his motive, plan and intent on the date of the homicides, and should be  
11 admitted.

12 In addition to proof of motive, plan and intent, the proposed evidence should also  
13 be admitted to show Pisano's consciousness of guilt. In Bradley v. State, the Oklahoma  
14 Court of Criminal Appeals upheld the admission of a letter where the defendant  
15 attempted to hire the murder of a witness in his theft trial<sup>6</sup>. Citing *Riley v. State*,  
16 49 P.2d 813 (Ok Cr 1935), and *State v. Young*, 463 P.2d 374, 377 (Or. App. 1970), the  
17 Bradley court found that '(t)estimony that an accused attempted to manufacture false  
18 evidence, to suborn perjury, or to purchase a witness is an implied admission of guilt, and  
19 is competent and admissible against him on his trial.' and "(e)vidence that a party  
20 attempts to suppress evidence by the intimidation of witnesses, though a crime, is  
21 relevant to his guilty state of mind and is therefore admissible as proof of guilt."

22 Although an Oklahoma decision, *Bradley* is remarkable for the proposition that  
23 even when the consciousness of guilt evidence is arguably substantially worse than the  
24 offense charged, the evidence is still so probative as to the defendant's mental state that it  
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26  
27 <sup>6</sup> *Bradley v. State*, 561 P.2d 548, 551 (OK CR 1977).

1 should be admitted. Bradley was charged with receiving and concealing stolen property  
2 when he attempted to hire the murder of a witness. Surely, by contrast the evidence of an  
3 attempt to solicit murder can and should be admissible in a Murder and Attempted  
4 Murder case like the one before this court.

5 While no there are no reported opinions in Alaska on the specific issue of murder  
6 for hire, the Alaska Court has generally favored consciousness of guilt evidence in other  
7 situations. For example, in *Stumpf v. State* the Court of Appeals upheld the admission of  
8 telephone threats against a witness.<sup>7</sup> The *Stumpf* court cited *Wortham v. State* for the  
9 proposition that third party attempt to intimidate a witness is admissible against a  
10 defendant as manifesting a consciousness of guilt. In *Wortham*, such evidence was  
11 admissible when the defendant directed his friends to make threats against witnesses and  
12 also vandalized a witness's home.<sup>8</sup>

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14  
15 **B. The State can Meet the Standard of Proof (Preponderance of the Evidence)**  
16 **Required to Admit the Evidence.**

17 It is the trial court's responsibility to examine all of the evidence, and without  
18 weighing credibility, decide if the jury could find by a preponderance of the evidence that  
19 the bad act occurred.<sup>9</sup> In the present case, the State expects to present the testimony of  
20 the inmate whom Pisano solicited, DOC staff who can verify their contact, recordings of  
21 Pisano on recorded jail calls about the whereabouts of Michael Dupree, and letters from  
22  
23

24  
25 <sup>7</sup> *Stumpf v. State*, 749 P.2d 880, 898 (Alaska App. 1988).

26 <sup>8</sup> *Wortham v. State*, 617 P.2d 510, 512 (Alaska 1980).

27 <sup>9</sup> *Bennett v. Municipality of Anchorage*, 205 P.3d 965 (Alaska App. 2004).



Pisano about “business” dealings. This evidence will establish by more than a preponderance of the evidence that he solicited the inmate to commit murder.

### C. The Evidence Should not be Excluded Pursuant to 403

The Alaska Court of Appeals has found that “in order to overcome the presumption in favor of admission, the prejudicial effect must be ‘demonstrably greater’ than the probative value of the evidence.”<sup>10</sup> As threshold matter character evidence introduced under Alaska Rule of Evidence 404(b) must be relevant.<sup>11</sup> The Alaska Supreme Court has stated that the definition of relevant evidence is a broad one.<sup>12</sup> Simply put, “evidence need not be direct or conclusive; it need only have some tendency to advance the proposition for which it is offered.”<sup>13</sup> Admission of this type of evidence is still limited by Alaska Rule of Evidence 403, which states that relevant evidence may be excluded if its probative value is outweighed by unfair prejudice. Unfair prejudice means the tendency of evidence of other acts to make the jury decide the case on improper grounds.<sup>14</sup> In other words, the evidence must arouse overmastering hostility by the jury towards the defendant, or the feeling that the defendant is a bad person who deserves to be punished regardless of the evidence of the charge for which he is being tried.<sup>15</sup>

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<sup>10</sup> *Hamilton v. State*, 1999 WL 716500, at 3 (Alaska App. 1999) (citing Alaska Evidence Rule 403 commentary at 494-495 (1998-99 main ed.)) (emphasis added).

<sup>11</sup> Alaska Rule of Evidence 401; Alaska Rule of Evidence 402.

<sup>12</sup> *Marsingill v. O’Malley*, 128 P.3d 151, 158 (Alaska 2006) (emphasis added).

<sup>13</sup> *Id.* at 158 (quoting *McLaughlin v. State*, 818 P.2d 683, 687 (Alaska App. 1991)).

<sup>14</sup> *City of Fairbanks v. Johnson*, 723 P.2d 79, 83 (Alaska 1986).

<sup>15</sup> *Id.*

1 In this case, the evidence of a continued plot to kill Michael Dupree is highly  
2 relevant and highly probative of what happened. The defendant has claimed self-defense.  
3 In fact, during his trial, he took the stand and asserted not only was he acting in self-  
4 defense, but also that Michael Dupree was the real killer when it came to the death of  
5 Dupree's closest friend and business partner Steven Cook. The defense primary strategy  
6 was to discredit the sole eyewitness to these homicides. A plan to "take out" that only  
7 eyewitness is highly probative of Pisano's motive, intent and plan in this case. It is  
8 additionally extremely probative of his consciousness of guilt. When he failed to get the  
9 result that he desired in the last trial, he became desperate and believed he needed to do  
10 something more drastic.

11 When the court balances the prejudicial effect of such evidence, it always has to  
12 be done against the probative value. Here the state acknowledges that the evidence is  
13 prejudicial. But it is not overly prejudicial in light of the facts of the case (three  
14 homicides and an attempted homicide) and especially when weighed against its probative  
15 value to inform the jury about Pisano's intent, motive, plan and consciousness of his own  
16 guilt.

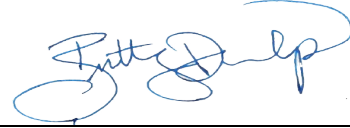
#### 17 18 **IV. CONCLUSION**

19 For all of the foregoing reasons, the State respectfully requests that the court allow  
20 it to introduce evidence of the defendant's continued plot to kill Michael Dupree, through  
21 the testimony of the inmate he solicited, videos from the jail and letters written by Pisano  
22 and the inmate. This evidence is highly relevant to the defendant's motive, plan, intent  
23 and consciousness of guilt. It will be highly probative to any jury faced with the  
24 defendant's testimony that he killed Kenneth Hartman and Morgan McCreadie only in  
25 self-defense and that Michael Dupree was the real killer of Steven Cook. The jury should  
26 be entitled to hear about Pisano's post trial efforts to kill the only surviving witness in  
27 order to fairly evaluate the evidence and weigh his guilt.

Dated at Anchorage, Alaska, this 5th day of March, 2021.

TREG R. TAYLOR  
ATTORNEY GENERAL

By:



Brittany L. Dunlop  
District Attorney  
Alaska Bar No. 0611072

This is to certify that on March 8, 2021 the foregoing was delivered via hand-delivery to Hatton Greer, OPA. The below authorized agent believe this transmission to be complete and without error.

K. Smith	3/8/21
Name	Date